HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 24 of 2001

Rajendra Singh S/o Sri Kamal Singh …Appellant

Versus

State … Opposite Respondent.

Approved for reporting.

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Not approved for reporting

Date of decision 1st April, 2005.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 24 of 2001

Rajendra Singh S/o Sri Kamal Singh
Joint Managing Director
M/s Rajdhani Growth Fund Private Limited
Delhi Road New Hardwar
District Hardwar … Complainant/
Appellant

Versus

1. Second A.C.J.M. Hardwar
2. Naveen Madan S/o Sri Radha Krshan Madan
Bilkeshwar Road, Hardwar
Distrcit Hardwar
3. State of Uttaranchal … Opposite parties

Sri Lok Pal Singh learned counsel for the appellant
Sri N.C. Gupta learned counsel for the opposite party No. 2 and learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

1. This criminal appeal arises out against the judgment and order dated 14.11.2000 passed by Second A.C.J.M. Hardwar in Complaint Case No. 1781 of 1999 Rajendra Singh Vs. Naveen Madan under Section 138 of Negotiable Instruments Act.

2. Brief facts giving rise to the present appeal are that the appellant Rajendra Singh filed a complaint under Section 138 of Negotable Instruments Act along with Section 420 I.P.C. against the opposite party No. 2, namely, Naveen Madan on the ground that the complainant was the Joint Managing Director of M/s Rajdhani Growth Fund Private Limited. The firm deals with the financing work.

3. The allegations made in the compliant were that Naveen Madan took a loan of Rs. 24,000/- (Rupees Twenty four thousand only) from the complainant's firm and on the basis of the terms and conditions of the loan Naveen Madan had to pay an amount of Rs. 1,067/- (Rupees One thousand and sixty seven only) per month for 36 months. Naveen

Madan did not pay the instalment in time and on demand by the complainant's firm, Naveen Madan sent a cheque for Rs. 31,333/- (Rupees Thirty one thousand three hundred and thirty three only) on 05.07.1992 with the request that the cheque may not be produced before the bank by 15.11.1992 when the cheque was deposited in the bank, the same was dishonored. Thereafter the complainant sent the notice to the accused Naveen Madan but he did not pay the amount. Hence, the complaint.

4. After filing the compliant, statement under Section 200 Cr.P.C. was recorded and thereafter statement of witness – Dharampal under Section 202 was also recorded.

5. Learned trial court after having perused the entire evidence was pleased to summon the accused Naveen Madan for facing the trial under Section 138 of Negotiable Instruments Act. The accused attended the court and thereafter, the court recorded the evidence.

6. The complainant produced himself as P.W. 1 and Ghanshyam Joshi (P.W.2) in the evidence. The complainant also produced Rampal Singh (P.W.3) a clerk of Syndicate Bank, Hardwar.

7. After the evidence of the complainant was over, the statement of the accused was recorded under Section 313 Cr.P.C. The accused produced Radha Krishnan Madan (D.W.1) father of the accused and Hiramani (D.W.2), a postman in his defence witness.

8. Learned trial court after hearing learned counsel for the parties and having perused the entire evidence on record was pleased to acquit the accused – Naveen Madan for the charge under Section 138 of Negotiable Instruments Act vide judgment and order dated 14.11.2000.

9. Feeling aggrieved by the impugned judgment and order of acquittal of the complainant preferred the appeal before this Court, which has been placed before me for final disposal.

10. I have heard learned counsel for the parties and perused the record.

11. The record shows that the complainant filed complaint against the accused for the offences under Section 138 of Negotiable Instruments Act and Section 420 I.P.C. but the accused was summoned to face the trial only under Section 138 of Negotiable Instruments Act.

12. Learned trial court also observed that the complainant was not an authorized person to file the complaint. Therefore, his complaint was liable to be dismissed.

13. The record shows that the complaint in his compliant has stated that he is the Joint Managing Director of M/s Rajdhani Growth Fund Private Limited which deals with the financing work. No power of attorney or any authorization letter has been filed by the complainant in order to show that he had authority to file the complaint on behalf of the order to show that he had authority to file the complaint on behalf of the firm before the court. Merely, being the Joint Managing Director of the fund will not entitle the complainant to file the complaint before the court.

14. When a cheque is issued in favour of any company or firm then for filing the complaint under Section 138 of Negotiable Instruments Act, it would be necessary that the same should be filed by the company itself. In the instant case, the complaint has been filed by the complainant Rajender Kumar who alleges himself to be the joint Managing Director of the firm. He has no authority to file the complaint on behalf of the company or firm.

15. In this context it would be relevant to reproduce the provision of ***Section 142 of the Negotiable Instruments Act*** which runs as follows:-

> ***"Cognizance of offence:-*** *Notwithstandin anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
>
> *(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*
>
> *(b) Such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;*
>
> *(c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.*

16. Therefore, it would be quite clear that in case, if the compliant has not been filed by the company, the court shall not take congnizance over the same. The complainant in the instant case could not show by way of any evidence before the court below that he is the holder in due course of the cheque. As I have already observed that the complainant also could not establish before the court below that he is a person authorized by the company.

17. Learned counsel for the appellant has cited before me ***JT 2000 (6) SC 588 Registrar of Companies Vs. Rajshree Sugar & Chemical Ltd. &others.***

18. I have gone through the judgment and I am of the view that this judgment is not going to help the appellant in any manner as the judgment cited before me relates to offence pertaining to the Companies Act while in the instant case the matter is related to the Negotiable Instruments Act.

19. Learned counsel for the appellant has also cited before me ***JT 2000 (5) SC 503 R. Rajagopal Vs. S.S. Venkat.*** I have also gone through the judgment and I am of the view that this judgment is also not going to help the appellant in any manner as the law propounded in the above cited judgment is entirely different while in the instant case the relevant question is as to whether the complainant had any authority to file the complaint before the court or not.

20. The trial court has rightly assessed and expressed its opinion in view of the provision of Section 142 Negotiable Instruments Act that the complainant had no authority to file the complaint on behalf of the firm. The complainant has been rightly dismissed by the trial court. I do not find any infirmity in the impugned order passed by the court below acquitting the opposite party No.2, namely Naveen Madan for the offence under Section 138 of Negotiable Instruments Act.

21. Apart of the aforesaid fact, the trial court has also discussed the evidence adduced by the parties before it. The trial court after assessment of the evidence also arrived at the conclusion that the opposite party, namely, Naveen Madan is entitled to acquittal.

22. The Hon'ble Supreme Court in a case reported in ***2003 Cr.L.J. 411 (SC) C. Anthony Vs. K.G. Raghvan Nair*** has clearly ruled that *"The appellate Court must also bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness-box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellant Court should not disturb the findings of the trial Court."*

23. In view of the aforesaid decision of the Hon'ble Supreme Court, I do not find any strong and good ground for reversing the order of acquittal passed by the court below. The judgment passed by the trial

Court does not appear to be perverse as no other reasonable view is possible.

24. I, therefore, do not find any ground to interfere in the order of acquittal passed by the trial court.

25. On the assessment of the evidence on record, I am of the definite view that the impugned order of acquittal passed by the trial court is based on proper appreciation of evidence and same is not liable to be disturbed.

26. thus, the appeal is dismissed. The judgment and order passed by the court below is hereby confirmed.

(B.C.Kandpal, J.)

01.04.2005
ASWAL